

AMENDED IN ASSEMBLY MAY 4, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 421**

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### **Introduced by Assembly Member Beall**

February 23, 2009

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An act to amend Section 18350 of, and to add Section 18350.5 to, the Welfare and Institutions Code, relating to foster care, and declaring the urgency thereof, to take effect immediately.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 421, as amended, Beall. Seriously emotionally disturbed children: out-of-home placement.

Existing law requires payments, issued by county welfare departments, for 24-hour out-of-home care to be provided on behalf of any seriously emotionally disturbed child who has been placed out of home pursuant to an individualized education program (IEP) developed under a specified provision of existing law. Existing law restricts payments for this purpose to children placed in privately operated residential facilities licensed in accordance with the California Community Care Facilities Act.

This bill, until January 1, 2013, would authorize these payments to be made to an out-of-state privately owned residential facility that meets applicable licensing requirements, and that is organized and operated on a for-profit basis, if specified conditions are met. The bill would require the State Department of Mental Health, in collaboration with the California Mental Health Directors Association, to provide

prescribed information to the Legislature regarding the out-of-home placement of seriously emotionally disturbed children.

This bill would also deem reimbursable specified costs of care for a seriously emotionally disturbed child with an individualized education program developed on or before the date the bill is enacted, that would otherwise satisfy the requirements of the bill.

By increasing available placement options for seriously emotionally disturbed children, this bill would require additional duties of county welfare departments, and would thus impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares as follows:
- 2 (a) As required by federal law, all ~~school-aged~~ *school-aged*
- 3 children are legally required to receive a Free and Appropriate
- 4 Public Education (FAPE) for kindergarten and grades 1 to 12,
- 5 inclusive (20 U.S.C. Sec. 1412(a)(1)).
- 6 (b) In accordance with federal law, California has delegated the
- 7 FAPE requirements to the *local education agencies and counties*
- 8 (Chapter 2.5 (commencing with Section 56195 of Part 30 of
- 9 Division 4 of Title 2 of the Education Code).
- 10 ~~(c) Counties are sometimes required to place specified severely~~
- 11 ~~emotionally disturbed children in the most appropriate placement~~
- 12 ~~to accomplish the goal of FAPE.~~
- 13 ~~(d) Counties~~
- 14 (c) *Local education agencies and counties* recognize, in rare
- 15 instances, that the ~~most~~ *only available* appropriate placement may

1 not be a nonprofit facility, but meets the needs of the child, as  
2 required by federal law.

3 (e)

4 (d) It is the intent of the Legislature in enacting this act to ensure  
5 that counties receive reimbursement for adherence to state and  
6 federal law ~~as they act in the best interest of the child in ensuring~~  
7 *that every child receives a free and appropriate public education.*

8 SEC. 2. Section 18350 of the Welfare and Institutions Code is  
9 amended to read:

10 18350. (a) Payments for 24-hour out-of-home care shall be  
11 provided under this chapter on behalf of any seriously emotionally  
12 disturbed child who has been placed out of home pursuant to an  
13 individualized education program developed under Section 7572.5  
14 of the Government Code. These payments shall not constitute an  
15 aid payment or aid program.

16 (b) Payments shall only be made on behalf of children placed  
17 in privately operated residential facilities located in California that  
18 are licensed in accordance with the California Community Care  
19 Facilities Act (Chapter 3 (commencing with Section 1500) of  
20 Division 2 of the Health and Safety Code).

21 (c) (1) Payments shall only be made on behalf of children placed  
22 in privately operated residential facilities that are located outside  
23 of California that meet the licensing standards of that state, as  
24 required under the Interstate Compact on the Placement of  
25 Children, which is set forth in Section 7901 of the Family Code.

26 (2) This subdivision shall remain operative only until January  
27 1, 2011.

28 (d) Except as provided in Section 18350.5, payments for care  
29 and supervision shall be based on rates established in accordance  
30 with Sections 11460 to 11467, inclusive.

31 (e) Payments for 24-hour out-of-home care under this section  
32 shall not result in any cost to the seriously emotionally disturbed  
33 child or his or her parent or parents.

34 SEC. 3. Section 18350.5 is added to the Welfare and  
35 Institutions Code, to read:

36 18350.5. (a) Notwithstanding any other provision of law,  
37 effective January 1, 2010, and until January 1, 2013, a payment  
38 described by Section 18350 may be made to an out-of-state  
39 privately operated residential facility that meets all applicable  
40 licensing requirements of the state in which the facility is located,

1 and that is organized and operated on a for-profit basis, if either  
2 of the following conditions is met:

3 (1) The county or the local educational agency (LEA) placed  
4 the child in a for-profit facility after due process proceedings were  
5 initiated pursuant to Chapter 5 (commencing with Section 56500)  
6 of Part 30 of the Education Code, and either of the following  
7 occurred:

8 (A) Following a due process hearing, the hearing officer issued  
9 a decision including a finding that, after a thorough search, no  
10 other comparable private nonprofit or publicly licensed residential  
11 facility was identified that is both willing to accept placement and  
12 capable of providing an appropriate education in compliance with  
13 federal and state special education law and other applicable  
14 provisions.

15 (B) A written mediation or settlement agreement was reached  
16 and the agreement includes, but is not necessarily limited to,  
17 documentation that a thorough search was conducted and no other  
18 comparable private nonprofit or publicly licensed residential  
19 facility was identified that is both willing to accept placement and  
20 capable of providing an appropriate education in compliance with  
21 federal and state special education law and other applicable  
22 provisions.

23 (2) The individualized education program team agreed, and the  
24 placement was made, after a thorough search in which no other  
25 comparable private nonprofit or publicly licensed residential care  
26 facility was identified that is both willing to accept placement and  
27 capable of meeting the child's needs in compliance with federal  
28 and state special education and other applicable provisions. The  
29 agency or agencies responsible for the child's placement shall  
30 document, as part of the individualized education program process,  
31 their search efforts and the reasons that no other placement option  
32 can be identified for the child.

33 (b) County reimbursement claims for placements pursuant to  
34 subdivision (a) shall not exceed the cost of services provided.

35 (c) Nothing in this section is intended to change existing  
36 procedures, protections, or requirements applicable to the  
37 placement of a child in an out-of-state facility, including  
38 out-of-state community care licensing requirements.

39 (d) (1) The State Department of Mental Health, in collaboration  
40 with the California Mental Health Directors Association, shall

1 annually provide information to the Legislature, during Senate and  
2 Assembly budget committee hearings, regarding residential  
3 placements that may be affected by this section. The information  
4 shall include, but not be limited to, all of the following:

5 (A) The annual number of in-state and out-of-state placements  
6 of children with serious emotional disturbances in nonprofit and  
7 in for-profit residential facilities.

8 (B) The average length of stay of those children in nonprofit  
9 and for-profit in-state and out-of-state facilities.

10 (C) The number of those children who were dependents, wards,  
11 or children voluntarily placed in foster care at the time of their  
12 placement into a nonprofit or for-profit residential facility.

13 (D) *The number of substantiated reports to counties of serious*  
14 *injuries requiring medical treatment of children in nonprofit and*  
15 *for-profit facilities, both in-state and out-of-state.*

16 (2) To the extent that ~~any~~ a county fails to voluntarily provide  
17 the information described in paragraph (1), the department shall  
18 note this failure as reason for the omission of information relevant  
19 to that county.

20 SEC. 4. (a) Notwithstanding any other provision of law, with  
21 respect to the handicapped and disabled students state-mandated  
22 local program, county reimbursement claims submitted to the  
23 Controller for reimbursement for services associated with  
24 providing, pursuant to Chapter 26.5 (commencing with Section  
25 7570) of Division 7 of Title 1 of the Government Code, allowable  
26 mental health treatment services required by, and state  
27 reimbursement for 24-hour care of, a seriously emotionally  
28 disturbed child placed out of home in an out-of-state for-profit  
29 residential facility pursuant to an individualized education program  
30 developed pursuant to Section 7572.5 of the Government Code,  
31 on or before the date this section is enacted, and that otherwise  
32 satisfy the requirements of this act, are deemed to be reimbursable.  
33 Placements made pursuant to this act shall be authorized to the  
34 extent permitted by federal law.

35 (b) Subdivision (a) does not abridge the right of the Controller  
36 to otherwise dispute claims on the basis of allowable costs. With  
37 the exception of those costs claimed in excess of what is allowable,  
38 claims that satisfy the requirements of subdivision (a) shall be fully  
39 paid in the amount originally submitted.

1 (c) No new past claims shall be reimbursed pursuant to this  
2 section.

3 SEC. 5. If the Commission on State Mandates determines that  
4 this act contains costs mandated by the state, reimbursement to  
5 local agencies and school districts for those costs shall be made  
6 pursuant to Part 7 (commencing with Section 17500) of Division  
7 4 of Title 2 of the Government Code.

8 SEC. 6. This act is an urgency statute necessary for the  
9 immediate preservation of the public peace, health, or safety within  
10 the meaning of Article IV of the Constitution and shall go into  
11 immediate effect. The facts constituting the necessity are:

12 In order to ensure payment for necessary out-of-home care for  
13 seriously emotionally disturbed children at the earliest possible  
14 time, it is necessary for this act to take effect immediately.